

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 03-14338
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 12, 2005 THOMAS K. KAHN CLERK

D. C. Docket No. 03-00015-CR-01-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TYSON EUGENE MARSHEK,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

(May 12, 2005)

**ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES**

Before ANDERSON and BIRCH, Circuit Judges, and ROYAL*, District Judge.

*Honorable C. Ashley Royal, United States District Judge for the Middle District of Georgia,
sitting by designation.

PER CURIAM:

We previously affirmed the sentence in this case after oral argument. United States v. Marshek, No. 03-14338 (11th Cir. Aug. 17, 2004). The Supreme Court has vacated our prior judgment and remanded the case to us for further consideration in light of Booker v. United States, 543 U.S. ___, 125 S.Ct. 738 (2005). Having reconsidered our decision pursuant to the Supreme Court's instructions, we reinstate our judgment affirming the sentence.

When Marshek was before this court prior to the certiorari petition being filed, he did not raise any issue based upon Booker, Blakely v. Washington, 542 U.S. ___, 124 S. Ct. 2531 (2004), or Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000).

Following the well-established rule in this circuit, see United States v. Levy, 379 F.3d 1241, 1242 (11th Cir. 2004), reh'g en banc denied, 391 F.3d 1327 (11th Cir. 2004), issues that are not timely raised in the briefs are deemed abandoned. In United States v. Ardley, 242 F.3d 989, 990 (11th Cir. 2001), we applied this rule to a case remanded from the Supreme Court in light of Apprendi. Recently, we applied Ardley to a post-Booker remand and found that the defendant had abandoned his Booker claim because he failed to raise it at the district court or in his initial brief. United States v. Dockery, __ F.3d __, 2005 WL 487735 (11th Cir. Mar. 3, 2005).

Our opinion affirming the sentence in this case is accordingly **REINSTATED.**